IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1359 OF 2002

Marian Anthony Fernandes ..Petitioner.
Vs.
Municipal Corporation of Greater Bombay ..
Respondents.

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Mr. D.C. Shah for the petitioner.
Mrs. A.R. Joshi for the respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

7th December, 2004.

P.C. :

1. The Petitioner claims to be carrying on a business in the name and style of M/s.National Electricals and Mandap Decorators at a plot of land bearing C.T.S. No.384(Part) of Village – Amboli, Taluka – Andheri, Bombay Suburban District Mumbai. The property is comprised in an area known as Maria Chawl, Jai Bhawani Mata Road, Opposite Paradise Apartments, Ceasor Road, Andheri (West), Mumbai 400 058.

2. According to the Petitioner C.T.S. No.384 was declared as a slum on 30th May, 1978 and there are more than 40 structures standing thereon. The structure according to the Petitioner has

been duly assessed. Acting on an apprehension that the Municipal Corporation will demolish the structure, the Petitioner filed L.C. Suit No.2601 of 2001 before the City Civil Court. On 8th May, 2001 an order was passed therein by the learned Trial Judge recording that the documents which were produced before the Court showed a long existence of the suit structure. The Municipal Corporation was directed not to demolish the structure without following due process of law. On 2nd April, 2002 a stop work notice under Section 354-A was issued to the Petitioner to which the Petitioner submitted a reply dated 3rd April, 2002 at 10.30 a.m. to the Sub-Engineer (Building) in the K/W Ward Office. The structure was demolished at 11.30 a.m. by the Municipal authority. This petition was admitted by an order of a learned Single Judge dated 17th June, 2002. Interim relief was then granted in terms of prayer clause (c) to the petition which reads as under :

> "(c) that in the alternative to prayer clause (b) herein, this Hon'ble Court be pleased to grant liberty to the Petitioner to reconstruct his business premises admeasuring about 40' x 20' made up of B.M. Walls and A.C. Sheet roof in the same condition in which it was existing prior to its illegal and unlawful demolition on 3rd April, 2002 situate at plot of land bearing C.T.S. No.384(part), Amboli Village, Maria Chawl, Jai Bhawani Mata Road, Opposite Paradise Apartment, Ceasor Road, Andheri (West), Mumbai 400 058 initially at his cost and expenses and the Respondents be ordered and directed to reimburse such costs and expenses within such period as

this Hon'ble Court may deem fit and proper."

This was subject to the condition that the Petitioner would confine the raising of the structure to the extent as it existed prior to the demolition and that the Petitioner shall not alter, expand or extend the original area of the structure. The Petitioner was directed to do so at his own costs. While passing the aforesaid order, the learned Single Judge observed that prima facie, the structure had been demolished in violation of the principles of natural justice and without affording an opportunity of being heard to the Petitioner. The Court was informed that in pursuance of the order dated 17th June, 2002 the Petitioner has carried our the exercise of reconstruction.

3. The demolition of the structure as the facts will show, has been carried out upon a stop work notice dated 2nd April, 2002 which was issued under Section 354-A of the Mumbai Municipal Corporation Act, 1888. The case of the Municipal Corporation is that despite the stop work notice, work has unauthorizedly been carried out by the Petitioner upon which the action of demolition was carried out. According to the Petitioner, he had submitted a

representation dated 3rd April, 2002 in response to the stop work notice and the demolition was carried out without considering the aforesaid reply.

4. The legality of the structure which existed on the site and the question as to whether the work was being unauthorizedly carried out by the Petitioner are essentially questions of fact. At this stage, it would neither be appropriate nor proper for the Court while exercising its jurisdiction under Article 226 of the Constitution to adjudicate upon these questions. The Petitioner has in the meantime, as already noted, reconstructed the structure in pursuance of the interim order passed by the Court. Having regard to all these circumstances, it would to my mind be appropriate to direct that the Ward Officer, K-West Ward shall consider the reply dated 3rd April, 2002 submitted by the Petitioner in response to the notice under Section 354-A dated 2nd April, 2002 and pass a reasoned order after furnishing to the Petitioner an opportunity of being heard. Parties are agreed that the Petitioner shall appear before the ward Officer at 11.00 a.m. on 14th December, 2004. The Ward officer shall pass orders in accordance with law within a period of two months thereafter.

5. The interim protection which was granted in pursuance of the order of the learned Single Judge dated 17th June, 2002 shall continue to operate in the meanwhile and in the event that an adverse order is passed against the Petitioner, it shall not be given effect to for a period of six weeks from the date of the passing of the order. The Petitioner would be at liberty to file a further reply before the Ward Officer on or before 14th December, 2004 together with such documentary material as the Petitioner may seek to rely upon. While disposing of the Petition, it is made clear that the Ward Officer shall arrive at an independent decision in the matter and the observations contained in the order of the learned Single Judge dated 17th June, 2002 which were confined only to the grant of interim relief shall not preclude the Ward Officer from deciding the matter upon merits. The Petition is disposed of in these terms. There shall be no order as to costs.

6. The parties to act on an authenticated copy of this order issued by the office of this Court.